BELLSOUTH

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May 23, 2005

Mr. Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended
Docket No. 2005-57-C

Dear Mr. Terreni:

Enclosed for filing are an original and twenty-five copies of BellSouth Telecommunications, Inc.'s Rebuttal Testimony of Kathy K. Blake, the Rebuttal Testimony of P. L. (Scot) Ferguson and the Rebuttal Testimony of Eric Fogle in the above-referenced matter.

By copy of this letter, I am serving all parties of record with a copy of the testimony as indicated on the attached Certificate of Service.

Sincerely,

Patrick Turner

Patrick W. Turner

PWT/nml
Enclosures
cc: All Parties of Record
DM5 # 585885

19421

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF ERIC FOGLE

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2005-57-C

MAY 23, 2005

Q. PLEASE STATE YOUR NAME, YOUR BUSINESS ADDRESS, AND YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC. ("BELLSOUTH").

A. My name is Eric Fogle. I am employed by BellSouth Resources, Inc., as a Director in BellSouth's Interconnection Operations Organization. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. ARE YOU THE SAME ERIC FOGLE THAT FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed Direct Testimony on May 11, 2005.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY FILED TODAY?

A. My testimony provides rebuttal to the direct testimony of NewSouth Communications Corp. ("NewSouth"), Nuvox Communications, Inc.

("NuVox"), KMC Telecom V, Inc. & KMC Telecom III LLC ("KMC"), and Xspedius Communications, LLC ("Xspedius"). I henceforth refer to these companies as the "Joint Petitioners." Specifically, I will address the following issue numbers, in whole or in part: 2-18 (Item 36), 2-19 (Item 37), and 2-20 (Item 38).

Q. DO YOU HAVE ANY PRELIMINARY COMMENTS?

A. Yes. As I stated in my direct testimony, there are numerous unresolved issues in this arbitration that have underlying legal arguments. Because I am not an attorney, I am not offering a legal opinion on these issues. I respond to these issues purely from a policy or technical perspective. BellSouth's attorneys will address issues requiring legal argument.

Item 36; Issue 2-18: (A) How should line conditioning be defined in the Agreement? (B) What should BellSouth's obligations be with respect to Line Conditioning? (Attachment 2, Section 2.12.1)

Q. ON PAGE 57 OF THE JOINT PETITIONERS' TESTIMONY, THEY STATE "LINE CONDITIONING SHOULD BE DEFINED IN THE AGREEMENT AS SET FORTH IN FCC RULE 47 CFR 51.319 (a)(1)(iii)(A)." DO YOU AGREE?

A. No. Federal Communications Commission ("FCC") Rule

51.319(a)(1)(iii) provides a definition for line conditioning but the Triennial Review Order ("*TRO*") clarifies this definition (in Paragraph 643) by requiring line conditioning "that incumbent LECs regularly perform in order to provide xDSL services to their own customers." The definition of line conditioning in the Agreement should be consistent with the *TRO*. The Joint Petitioners' position ignores this fact as well as the FCC's findings in the *TRO*.

Q. THE JOINT PETITIONERS, ON PAGE 58 OF THEIR TESTIMONY, STATE "LINE CONDITIONING IS NOT LIMITED TO THOSE FUNCTIONS THAT QUALIFY AS ROUTINE NETWORK MODIFICATIONS." PLEASE COMMENT.

A. It is impossible to square the Joint Petitioners' statement with the FCC's findings in Paragraph 643 of the *TRO*, where it specifically states the opposite: "Line conditioning is properly seen as a routine network modification that incumbent LECs regularly perform in order to provide xDSL services to their own customers." Thus, the Public Service Commission of South Carolina ("Commission") should reject the Joint Petitioners' position.

Q. FURTHER, ON PAGE 58 OF THEIR TESTIMONY, THE JOINT PETITIONERS CLAIM THAT A "'ROUTINE NETWORK MODIFICATION' IS NOT THE SAME OPERATION AS 'LINE CONDITIONING' NOR IS XDSL SERVICE IDENTIFIED BY THE FCC

AS THE ONLY SERVICE DESERVING OF PROPERLY ENGINEERED LOOPS." PLEASE COMMENT

A. The Joint Petitioners' position is inconsistent with the *TRO.* For instance, the FCC defines a "routine network modification" in paragraph 632 of the *TRO* as those activities that incumbent LECs regularly undertake for their own customers." In Paragraph 643 of the *TRO*, the FCC further states that "[a]s noted above, incumbent LECs must make the routine adjustments to unbundled loops to deliver services at parity with how incumbent LECs provision such facilities for themselves." BellSouth's language is entirely consistent with the FCC's ruling in the *TRO* on this issue. As I stated in my direct testimony, in some situations, that language exceeds the FCC's requirements for line conditioning.

Q. WITH RESPECT TO ISSUE 2-18 (B), THE JOINT PETITIONERS, ON PAGE 60 OF THEIR TESTIMONY, STATE THAT "IT IS NOT PERMISSABLE UNDER THE RULES FOR BELLSOUTH TO PERFORM LINE CONDITIONING ONLY WHEN IT WOULD DO SO FOR ITSELF." PLEASE COMMENT.

A. It is impossible to reconcile this position with the FCC's findings in Paragraph 643 of the *TRO,* where it expressly found that "line conditioning is properly seen as a routine network modification that incumbent LECs **regularly perform** in order to provide xDSL services

to their own customers." (*emphasis added).*

Q. THE JOINT PETITIONERS CLAIM THAT DISCUSSING "'ROUTINE NETWORK MODIFICATION' AS OCCURRING UNDER RULE 51.319(a)(1)(iii) IS SIMPLY WRONG: THAT TERM DOES NOT APPEAR ANYWHERE IN RULE 51.319(a)(1)(iii)." PLEASE COMMENT.

A. The FCC's Routine Network Modification discussion, and its relation to Line Conditioning, are clearly articulated in Paragraphs 642-644 of the *TRO*. The very fact that the Rule 51.319(a)(1)(iii) may not mention the phrase "routine network modifications" does not negate the FCC's express findings in the *TRO*.

Item 37; Issue 2-19: Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less? (Attachment 2, Section 2.12.2)

Q. THE JOINT PETITIONERS STATE, ON PAGE 61 OF THEIR TESTIMONY, THAT "PETITIONERS ARE ENTITLED TO OBTAIN LOOPS THAT ARE ENGINEERED TO SUPPORT WHATEVER SERVICE WE CHOOSE TO PROVIDE." PLEASE COMMENT.

A. BellSouth does not make any attempt to limit the services that the Joint Petitioners wish to provide over the loops that they purchase as

Unbundled Network Elements ("UNEs") from BellSouth. However, BellSouth is only obligated by the *TRO* to provide line conditioning on loops at parity to what it does for itself. Competitive Local Exchange Carriers ("CLECs") are then free to utilize those loops to support whatever services the CLECs choose to provide.

Q. DO YOU AGREE WITH THE JOINT PETITIONERS' STATEMENT ON PAGES 61-62 OF THEIR TESTIMONY THAT "NOTHING IN ANY FCC ORDER ALLOWS BELLSOUTH TO TREAT LINE CONDITIONING IN DIFFERENT MANNERS DEPENDING ON THE LENGTH OF THE LOOP"?

A. No. As I stated in my direct testimony, the *TRO* clearly states that BellSouth must perform the same line conditioning activities for CLECs as it does for its own retail customers. Therefore, BellSouth's procedures for providing line conditioning to its retail customers are the same processes and procedures that apply to the Joint Petitioners. For its retail voice service customers, BellSouth adds or does not add load coils depending on the length of the copper loops. As set forth in my direct testimony, and, consistent with the *TRO,* BellSouth has offered these same procedure to the Joint Petitioners.

Q. NUVOX CLAIMS THAT IT IS CONTEMPLATING DEPLOYING NEW TECHNOLOGIES THAT WILL REQUIRE THE REMOVAL OF LOAD COILS OVER 18,000 FEET. CAN YOU PLEASE RESPOND?

A. Yes. First, NuVox's testimony is not based on any real-world experience because none of the Joint Petitioners requested any type of line conditioning from BellSouth in 2004, let alone the removal of load coils on loops over 18,000 feet. Further, in BellSouth's entire region, all CLECs requested BellSouth to remove only 55 bridged taps and 18 load coils, of which only two were on loops in excess of 18,000 feet. The impact of the Commission's decision on this issue is further minimized by the fact that only 21.7 percent of all copper loops in South Carolina exceed 18,000 feet. The lack of any actual data supporting the Joint Petitioners' claims proves that the type of line conditioning in dispute is not routine and that these types of requests should be handled on an individual case basis.

Further, the development of new technologies takes into account current network design requirements, such as load coils and bridged taps, in their development. Telecommunications networks are designed, per published standards, which ensures that individual equipment and network components within a standard network will function properly. Utilizing non-standard equipment, or network configurations, considerably increases the cost to provide services. As a result, in order to be economically viable, developers of new technologies expend tremendous resources on standards for their new technologies. This assures the service providers who purchase equipment that it will work as designed. All forms of xDSL technology, and other advanced services designed to be used with in the

telecommunications network, are either fully standardized or working on standardization through the appropriate organizations. One of the positive effects of this process is the virtual elimination of the need for non-standard or non-routine line conditioning, similar to that requested by the Joint Petitioners.

Item 38; Issue 2-20: Under what rates, terms and conditions should BellSouth be required to perform Line Conditioning to remove bridged taps? (Attachment 2, Sections 2.12.3 & 2.12.4)

Q. DO YOU AGREE WITH THE JOINT PETITIONERS' ASSERTION THAT REMOVAL OF BRIDGED TAPS IS INCLUDED IN THE DEFINITION OF LINE CONDITIONING?

A. No. If BellSouth routinely removed bridged taps for its own retail customers in order to provide xDSL services, then the removal of bridged taps for CLECs would be included in the *TRO* definition of line conditioning. As I stated in my direct testimony, because BellSouth does not routinely remove bridged taps for its own xDSL customers, such activity does not fall within the FCC's definition of line conditioning in the *TRO*.

Q. DO YOU BELIEVE THAT BRIDGED TAP THAT OF LESS THEN 2,500 FEET IN LENGTH SIGNIFICANTLY IMPAIRS THE PROVISION OF HIGH SPEED DATA TRANSMISSION?

A. No. The policy of not removing bridged taps less than 2,500 feet ("Short Bridged Taps") was established by both BellSouth and the CLECs through the industry shared loop collaborative. Both BellSouth and the CLECs in this collaborative would not have agreed to such a policy if they believed that failing to remove Short Bridged Taps would impair the provision of high speed data service. Additionally, this joint policy is consistent with industry standards for xDSL services, which recommend bridged taps on loops to be between 2,500 feet and 6,000 feet in length. BellSouth's line conditioning policies are consistent with these standards.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

(DM#586566)

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for BellSouth Telecommunications, Inc. ("BellSouth") and that she has caused the Rebuttal Testimony of Eric Fogle in Docket No. 2005-57-C to be served upon the following this May 23, 2005:

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PC Docs # 577384

19412

BELLSOUTH TELECOMMUNICATIONS, INC.

REBUTTAL TESTIMONY OF P.L. (SCOT) FERGUSON

BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

DOCKET NO. 2005-57-C

MAY 23, 2005

Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH TELECOMMUNICATIONS, INC., AND YOUR BUSINESS ADDRESS.

A. My name is Scot Ferguson. I work for BellSouth Telecommunications, Inc. ("BellSouth") as Manager – Network Interconnection Operations. My business address is 675 West Peachtree Street, Atlanta, Georgia 30375.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed Direct Testimony on May 11, 2005.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my Rebuttal Testimony is to address various concerns and issues raised in the Direct Testimony filed by KMC Telecom V, Inc. and KMC Telecom III, LLC, (together, "KMC"), NuVox Communications, Inc. and NewSouth Communications Corp. (together, "NuVox/NewSouth"), and the Xspedius Companies. I refer to these companies collectively as the "Joint Petitioners."

This Rebuttal Testimony should be read in conjunction with my Direct Testimony.

Item 86(B) (Issue 6-3(B)): How should disputes over alleged unauthorized access to CSR information be handled under the agreement? (Attachment 6, Sections 2.5.6.2 and 2.5.6.3)

Q. AT PAGES 77-78 OF THEIR DIRECT TESTIMONY, THE JOINT PETITIONERS ACKNOWLEDGE THAT BELLSOUTH MODIFIED ITS POSITION ON THIS ITEM DURING THE ARBITRATION PROCEEDING, BUT ASSERT THAT BELLSOUTH'S MODIFIED POSITION RETAINS "INAPPROPRIATE PULL-THE-PLUG PROVISIONS." DO YOU AGREE?

A. No. As I discussed in my Direct Testimony, BellSouth, in February 2005, modified its proposed reciprocal interconnection agreement language to address ***all*** of the Joint Petitioners' concerns with Item 86(B) that were previously stated in their testimony in this docket, and also in prior similar arbitration hearings. As I will explain in greater detail (and as I discussed in my Direct Testimony), BellSouth's proposed remedies are triggered only upon a CLEC's failure to cure or dispute an allegation of unauthorized access to CSR information.

As I further described in my Direct Testimony, BellSouth offered to modify its proposed interconnection agreement language on Item 86(B) by specifying that the *alleging* Party should notify by *e-mail* a designated contact person of the *other*

Party[1] prior to any suspension and/or termination of access to CSR information, and that, if there is a dispute about the allegation of CSR violations, the *alleging* Party – prior to any suspension and/or termination of access – would bring the matter before the appropriate regulatory body for expedited resolution.

BellSouth's proposal incorporates the Dispute Resolution provision of the General Terms and Conditions of the interconnection agreement, which provides in relevant part that during the pendency of a dispute, each Party will continue to perform its obligations under the interconnection agreement.[2] BellSouth's proposal should be acceptable to the Joint Petitioners as it mirrors the Joint Petitioners' position on Item 86(B). That is, if there is a dispute, there will be no "pulling of the plug" as suggested by the Joint Petitioners.

Q. HAVE THE JOINT PETITIONERS RESPONDED TO BELLSOUTH'S PROPOSED MODIFICATIONS?

A. No. BellSouth proposed its modifications over three (3) months ago. While the Joint Petitioners state (at page 78 of their testimony) that they would like to see certain "commitments memorialized in contract language" (commitments which BellSouth believes are already present in its proposed language), the Joint Petitioners have failed to provide to BellSouth any alternative counter language as a means of negotiation. Instead, they have attempted to negotiate or suggest

[1] It is the responsibility of the Parties to designate an appropriate person who can readily respond to any notifications relevant to this Item. Accordingly, any complaints that the Joint Petitioners might have regarding the possibility that a notice may be overlooked or go unread is a matter beyond BellSouth's control and should be dismissed.

[2] The dispute resolution provision contained in the interconnection agreement's General Terms and Conditions section initially does not apply to billing disputes, which are specifically addressed in Section 2 of Attachment 7 (which is not in dispute).

language only while on the witness stand. Obviously, the witness stand is neither an appropriate nor effective forum for negotiating an interconnection agreement.

Q. DOES BELLSOUTH'S LANGUAGE ADDRESS THE JOINT PETITIONERS TIME CONCERNS?

A. Yes. Although the Joint Petitioners assert (at page 78 of their testimony) that BellSouth's proposed language has "impossibly short response windows" associated with it, the Joint Petitioners neglect to point out that, under BellSouth's proposed language, a Party has at least 14 days to produce an LOA before the Party requesting the LOA may take any action.[3] Further, the Joint Petitioners fail to mention that, in their South Carolina end user tariffs, the Joint Petitioners reserve the right to ***immediately discontinue service without notice*** in the event of fraudulent or unauthorized use of a CLEC's service. *See* NuVox Tariff § 2.7.3.D; Xspedius Tariff § 2.5.5(F); KMC Tariff § 2.5.5(F) (The Joint Petitioners tariffs were attached to Ms. Blake's Direct Testimony as Exhibit KKB-1).

As I discussed in my Direct Testimony, the alleging Party needs timely recourse to prevent continued unauthorized access of proprietary CSR information. The timeframes proposed by BellSouth are not unduly burdensome; and are, in fact, more generous than the timeframes contained in the Joint Petitioners' tariffs.

[3] The Joint Petitioners' concern about short timeframes overlooks the fact that the Parties already have agreed to use "best efforts" to produce an appropriate LOA upon request. Further, before the alleging Party can take any action, the accused Party has, at a minimum, 14 days to produce an LOA to avoid the risk of suspension or termination of services (seven (7) business days after receiving a claim of unauthorized access to CSR plus five (5) calendar days from receipt of e-mail stating that services could be suspended or terminated if the violation is not cured).

Q. WHY IS THE JOINT PETITIONERS' LANGUAGE ON THIS ITEM UNACCEPTABLE?

A. There are two primary reasons. First, the Joint Petitioners' language provides no timeframes within which production of an LOA *must* occur, or when suspension or termination *might* occur. This is unacceptable. Further, the Joint Petitioners' language is unwarranted, as the Joint Petitioners have failed to articulate one reason why it would take some undetermined length of time for a Party to produce an appropriate LOA that the Party has a legal and contractual obligation to have in its possession. Because this agreement is subject to adoption by other CLECs, it remains BellSouth's position that it is prudent and necessary to have defined timeframes for this Item (as proposed in BellSouth's language) in the event that a Party to the agreement breaks the law or its contractual obligations.

Second, the Joint Petitioners' language does not allow the alleging Party to invoke suspension and/or termination of services in the event that the accused Party ignores a claim of unauthorized access to CSR information. In short, BellSouth strongly disagrees with the notion that a Party's blatant disregard of its legal and contractual duties, coupled with such Party's ***failure to raise a dispute,*** should somehow be considered a "dispute" that requires Commission involvement and perpetuates the offending Party's ability to continue accessing CSR information while such a "dispute" is pending.

Item 103 (Issue 7-9): Should BellSouth be entitled to terminate service to a CLEC pursuant to the process for termination due to non-payment if the CLEC refuses to

remit any deposit required by BellSouth within 30 calendar days? (Attachment 7, Section 1.8.6)

Q. WHAT IS BELLSOUTH'S POSITION ON THIS ISSUE?

A. As I stated in my Direct Testimony, BellSouth should be permitted to terminate service to a CLEC if the CLEC refuses to remit, or simply does not remit, within 30 calendar days any deposit required by BellSouth. Thirty calendar days is a reasonable time period within which a CLEC should meet its fiscal responsibilities and satisfy its contractual obligation to respond to an appropriate deposit demand.

Q. WHY IS THE JOINT PETITIONERS' POSITION ON THIS ITEM INADEQUATE?

A. It is not nearly inclusive enough. The Joint Petitioners' position as stated in their testimony (at page 93), would allow BellSouth to terminate services under only two conditions (both of which BellSouth concurs), but other situations could occur that would not be covered by the Joint Petitioners' proposed language.

For example, a CLEC *might ignore* a request for a deposit. Under the Joint Petitioners' proposal, BellSouth would have no recourse to terminate a CLEC under those conditions, and to protect its financial risks. Since the Parties have already agreed to the specific and objective deposit criteria under which BellSouth may demand a deposit or request an additional deposit, it is reasonable

that BellSouth should be able to terminate services to a CLEC in the event that a CLEC that fails to meet such criteria also fails to respond to *any* deposit demand.

Q. AT PAGE 94 OF THEIR TESTIMONY, THE JOINT PETITIONERS STATE THAT BELLSOUTH'S LANGUAGE "WOULD ALLOW BELLSOUTH TO CIRCUMVENT THE DISPUTE RESOLUTION PROVISIONS OF THE AGREEMENT." DO YOU AGREE?

A. No. The CLEC has 30 days to dispute the deposit request and BellSouth has proposed language for Item 104 (BellSouth witness Blake's issue) that will address disputes relating to deposits.

Q. DOES THAT CONCLUDE YOUR TESTIMONY?

A. Yes.

(DM#586583)

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
COUNTY OF RICHLAND)

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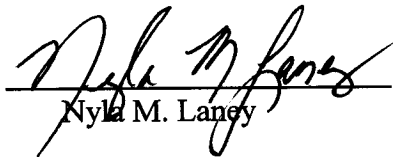

Nyla M. Laney

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